

APPENDIX

EXHIBIT

- 1 Order of Illinois Supreme Court Denying
Review
- 2 Order of Illinois Appellate Court
Affirming Circuit Court Decree
- 3 Illinois Circuit Court Decree

EXHIBIT 1

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, IL 62706

October 5, 1982

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No. Robert Begassat, petitioner, vs. The Cosmopolitan
National Bank of Chicago as Trustee, etc., et
al., respondents. Leave to appeal, Appellate
Court, First District.

The Supreme Court today DENIED the petition for leave
to appeal in the above entitled cause.

Very truly yours,

Clerk of the Supreme Court

EXHIBIT 2

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

FIRST DIVISION
APRIL 12, 1982

81-787

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROBERT BEGASSAT,)	APPEAL FROM THE
Plaintiff-Counter)	CIRCUIT COURT OF
Defendant, Appellant,)	COOK COUNTY.
)	
v.)	
)	
THE COSMOPOLITAN NATIONAL)	HONORABLE
BANK OF CHICAGO AS TRUSTEE)	GEORGE A. HIGGINS,
UNDER TRUST NO. 13199 and)	PRESIDING.
JOHN MAGNA,)	
)	
Defendants-Counter)	
Plaintiffs, Appellees.)		

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

Robert Begassat brought an action to compel specific performance of a contract to sell realty. The trial court entered a decree denying specific performance. In this appeal, Begassat argues that the trial court erred in denying specific performance.

Specific performance is not a matter of right, and one seeking to specifically enforce a contract for the sale of realty must prove that he has complied with its terms, or was able, ready and willing to comply but was prevented from doing so by the other party. (Beesley Realty & Mortgage Co. v. Busalachi (1963), 28 Ill. 2d 162, 165, 190 N.E. 2d 715; Lovins v. Kelley (1960), 19 Ill.2d 25, 166 N.E.2d 69.) Begassat maintains that he was able, ready and willing to close on

the original designated closing date, but that he was prevented from doing so because of the pendency of a lawsuit against Magna (the seller and a defendant herein) involving a building code violation. Magna accepted an offer by one of Begassat's tenants, Snyder, to do the necessary repair work for \$850. When Snyder demanded pre-payment, Magna set aside \$1,000 with his attorney for the specific purpose of paying Snyder for his services. When Snyder had not begun to do the repairs after a substantial period of time, Magna suggested to Begassat that he take the property in an "as is" condition and accept a credit against the purchase price. Begassat rejected this suggestion.

The evidence shows that Magna was anxious and willing to close, but that Begassat was unwilling, inaccessible and used stalling tactics which

prevented the parties from closing. As a result, we find that Begassat was not entitled to specific performance of the real estate contract.

Begassat raises a few subsidiary issues which, in our opinion do not merit mention.

We therefore affirm the judgment of the circuit court of Cook County.

JUDGMENT AFFIRMED.

CAMPBELL, P.J., McGLOON and O'CONNOR, JJ.

EXHIBIT 3

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ROBERT BEGASSAT,)
)
Plaintiff,)
)
v.)
)
COSMOPOLITAN NATIONAL)
BANK, as Trustee, et al.,)
Defendants.)
)
JOHN MAGNA,)
)
Counterplaintiff,)
)
FORCIBLE DETAINER ACTION	
v.)
)
ROBERT BEGASSAT,)
)
Counterdefendant.)

DECREE

This cause having been heard on the trial call
and the Court having heard the testimony of various
witnesses, having examined documents received in

evidence, having heard arguments of counsel and being fully advised in the premises,

The Court finds as follows:

A. Plaintiff has failed to prove that he is entitled to the relief sought in Count I of the Complaint and such Count should be dismissed.

B. As to Count II of the Complaint, the Court finds the issues in favor of Defendantss and against Plaintiff.

C. The Counterclaimant, John Magna, is entitled to a judgment in his favor and against the Counterdefendant, Robert Begassat, for possession of all the premises at 1404 N. La Salle St., Chicago.

It is therefore Ordered, Adjudged and Decreed as follows:

1. Count I of the Complaint is dismissed for

want of equity, without costs.

2. Judgment is entered in favor of Defendants and against Plaintiff on Count II of the Complaint, without costs.

3. Judgment for possession of the entire premises at 1404 N. LaSalle St., Chicago, is entered in favor of Counterclaimant, John Magna, and against Counterdefendant, Robert Begassat, and a writ of restitution shall issue for the purpose of enforcing such judgment. The issuance of such writ shall be stayed for 45 days.

4. This decree is entered nunc pro tunc as of February 3, 1981, the date on which the court delivered its oral decision.

5. The Court finds that there is no just reason for delaying enforcement of, or appeal from, this decree.

Enter: _____
Judge